

220 CMR 2.00: ADOPTION OF REGULATIONS

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2.01: Definition of Regulation

220 CMR 2.00 governs the procedures to be followed by the Department when adopting regulations. The term "regulation" shall be as defined in M.G.L. c. 30A, § 1(5). "Regulation" does not, however, include advisory rulings, rules relating to the internal management of the Department and not directly related to the rights or procedures available to the public, decisions rendered in adjudicatory proceedings, or the filing of tariffs, rate schedules, and terms, conditions and regulations in connection therewith.

2.02: Petition for Adoption of Regulations

Any interested person or his attorney may at any time petition the Department to adopt, amend, or repeal any regulation. The petition shall be addressed to the Department and sent to the Secretary by mail or delivered in person during normal business hours. All petitions shall be signed by the petitioner or his attorney, contain his address or the address of his attorney, and set forth clearly and concisely the text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments.

2.03: Initial Procedure to Handle Recommended Regulations

Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to 220 CMR 2.02 or upon written recommendation by a Commissioner or staff members of the Department that a regulation be adopted, amended or repealed, the Commission shall determine whether to schedule the petition or recommendation for further proceedings in accordance with 220 CMR 2.04 or 2.05.

If the regulation has been presented to the Department under 220 CMR 2.02, the Secretary of the Department shall within ten days after such determination notify the petitioners of the Commission's action.

2.04: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing Is Required

(1) Notice.

- (a) Notice of the proposed action to adopt regulations shall be given by the Department at least 21 days prior to its proposed action, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any person or group which has filed request for notice.
- (b) The notice shall contain the following:
 - 1. The Department's statutory authority to adopt the proposed regulation.
 - 2. The procedure for submitting data, views or arguments as set forth in 220 CMR 2.04(2).
 - 3. The express terms or the substance of the proposed regulations.
 - 4. Any additional matter required by any law.

The above notwithstanding, the Department shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

- (2) Procedure. Within 21 days after the publication and sending of notice regarding the proposed action, any interested person may submit a signed letter, brief or other memorandum stating his views or arguments concerning the proposed action. The letter, brief or memorandum shall be addressed to the Department and sent to the Secretary by mail or delivered in person during normal business hours. The Commission shall, at its next scheduled meeting, consider the proposed action. Within 30 days after this meeting, the Department shall give written notice of the disposition of the proposed action to all persons required to receive personal notice under 220 CMR 2.04(1)(a) and such other persons submitting a letter, brief, or other memorandum.
- (3) Oral Participation. The Commission may afford any interested person or his duly authorized representative, or both, an opportunity to present data, views or arguments orally before the Commission during the meeting at which the proposed action is to be considered. If the Commission finds that such oral presentation is unnecessary or impracticable, it may require written presentation according to 220 CMR 2.04(2).

- (4) Waiver of Notice and Participation. If the Commission finds that the requirements of notice and opportunity to present views on its proposed action are unnecessary, impracticable or contrary to the public interest, the Commission may dispense with such requirements or any part thereof. The Commission's finding and a brief statement of the reasons for its finding shall be incorporated in the regulation, amendment or repeal as filed with the Secretary of State under 220 CMR 2.07.

2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where a Public Hearing Is Required

- (1) Notice.
- (a) Notice of a public hearing shall be given at least 21 days prior to the date of the hearing, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any person or group which has filed written request for notice pursuant to 220 CMR 2.09.
- (b) The notice shall contain the following:
1. The Department's statutory authority to adopt the proposed regulation.
 2. The time and place of the public hearing.
 3. The express terms or the substance of the proposed regulation.
 4. Any additional matter required by any law.

The above notwithstanding, the Department shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

- (2) Procedure. On the date and at the time and place designated in the notice referred to in 220 CMR 2.05(1), the Commission shall hold a public hearing. The meeting shall be opened, presided over and adjourned by the Chairman or other Commissioner designated by the Chairman. Within ten days after the close of the public hearing, written statements and arguments may be filed with the Commission. The Commission shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.
- (3) Oral Participation. Any interested person or his duly authorized representative, or both, shall be given an opportunity to present oral statements and arguments. In its discretion the Commission may limit the length of oral presentation.
- (4) Emergency Regulation. If the Commission finds that the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary

to the public interest, the Commission may dispense with such requirements and adopt the regulation as an emergency regulation. The Commission's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the Secretary of State in accordance with 220 CMR 2.07. Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under 220 CMR 2.07. An emergency regulation shall not remain in effect for longer than three months unless during the time it is in effect the Department gives notice and holds a public hearing and adopts it as a permanent regulation in accordance with 220 CMR 2.00.

2.06: Availability of Regulation

The Secretary of the Department shall be responsible for keeping a book containing all the Department's regulations. In addition, the Secretary shall compile and publish the regulations which are currently in effect. All the regulations of the Department shall be available for inspection during normal business hours at the Department's offices. Copies of all regulations shall be available to any person on request. The Department may charge a reasonable fee for each copy.

2.07: Filing of Regulation

Upon the adoption of a regulation, an attested copy shall be filed with the Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon filing unless a later date is required by any law or is specified by the Department.

2.08: Advisory Ruling

- (1) Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Department. The request shall be addressed to the Department and sent to the Secretary by mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. If the Commission determines that an advisory ruling will not be rendered, the Department shall within ten days thereafter notify the petitioner that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.

- (2) The Department may notify any person that an advisory ruling has been requested and may receive and consider arguments, views, or data from persons other than the person requesting the ruling.

2.09: Request for Notice of Hearings

- (1) Who May File. Any person or group may file a request in writing to receive notice of hearings or regulations which may affect such person or group.
- (2) Form of Request. The request shall contain the following:
 - (a) Name of person or group;
 - (b) Address;
 - (c) Subject matter of regulations which may affect the person or group.
- (3) When Filed. The request shall be filed with the Secretary of the Department during the month of December and shall be in effect only during the subsequent calendar year.

REGULATORY AUTHORITY

220 CMR 2.00: M.G.L. c. 30A, § 5.